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16 **UNITED STATES DISTRICT COURT**

17 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

18 CITY AND COUNTY OF SAN FRANCISCO,
19 et al.,

20 Plaintiffs,

21 v.

22 PURDUE PHARMA L.P., et al.

23 Defendants.

24 Civil Case No.: 3:18-CV-07591-CRB

25 **DEFENDANTS' AMENDED PROPOSED
26 CASE SCHEDULE**

27 Honorable Charles R. Breyer

28 Defendants submit this proposal pursuant to the Court's Order of May 5, 2020, which directed the parties to propose a more detailed litigation and trial schedule. Dkt. 199. Since the Court entered that Order, the parties have completed briefing on motions to dismiss plaintiffs' First Amended Complaint ("FAC"). They have also served initial document requests, the responses to which will shortly be due (and in some instances have already been served). Meanwhile, the parties agreed in an interim report to the Court that the COVID-19 Pandemic has necessarily hampered both sides' ability to conduct much discovery. *See* Dkt. 198. Although restrictions related to the Pandemic have begun to

1 ease, things remain far from normal. Plaintiffs will presumably report on their ability to focus their
 2 personnel on responding to discovery – a question that, for reasons discussed below, is fundamentally
 3 important in establishing any realistic schedule in this case. The schedule proposed here assumes that
 4 plaintiffs will be able to comply promptly and comprehensively with their discovery obligations, without
 5 further material delays due to the Pandemic. Should that not be the case, a more extended schedule may
 6 be necessary.

7 During the February 26 status conference, the Court posed two questions bearing on the schedule
 8 in this case: “[W]hat [is] the playing field going to be like?” and “What really has to be done?”
 9 February 26 Tr. at 14. Defendants answered these questions in their March 20, 2020 Response to
 10 Plaintiffs’ Proposed Case Schedule (the “Response”). See Dkt. 133. To date, plaintiffs have not
 11 answered either question, and instead merely suggested that, in order to permit an “aggressive”
 12 schedule, the Court should artificially limit defendants’ ability to obtain discovery. See, e.g., Dkt. 129 at
 13 1 (asserting that the proposed March 2021 trial date is possible if plaintiffs are allowed to limit their
 14 document production obligations to an unspecified 25 custodians). Meanwhile, plaintiffs have
 15 repeatedly acknowledged that the COVID-19 Pandemic affects the ability of key personnel to assist with
 16 discovery. See, e.g., Dkt. 135 at 3. The Court should adopt a realistic schedule that takes into account
 17 the scope and breadth of plaintiffs’ claims and, as explained below, the considerable discovery that
 18 needs to be conducted.

19 I. What Is the Playing Field?

20 The FAC comprises **925** paragraphs over **284** pages. Dkt. No. 128. Plaintiffs have suggested
 21 that the FAC represents a streamlining of their case because it is based on complaints in other
 22 jurisdictions. Dkt. 135 at 4. But plaintiffs necessarily concede that “the San Francisco-specific facts
 23 differ from Summit County-specific facts,” even though the allegations against Defendants are nearly
 24 identical. *Id.* at 7. As Defendants have repeatedly explained – and as Plaintiffs have never seriously
 25 disputed – the vast majority of discovery that remains relates to *plaintiffs*, for example: the alleged
 26 opioid crisis *in San Francisco*, the impact of that alleged crisis *on plaintiffs*, and plaintiffs’ response to
 27 the alleged crisis. None of that discovery has occurred; all of it is necessary.

1 Further, as explained in defendants' Response, plaintiffs have not streamlined their claims in any
 2 meaningful respect. Dkt. 133 at 2-3. Although the FAC asserts fewer individual "causes of action" than
 3 its predecessor, plaintiffs dropped only a single cause of action – for negligence. They still assert claims
 4 for public nuisance, and alleged fraud-based RICO violations, as well as alleged violations of the UCL
 5 and the FAL.

6 Plaintiffs previously represented that they would amend their Fact Sheet to narrow the scope of
 7 damages and, therefore, discovery. Dkt. 135 at 3-4. But plaintiffs' Amended Fact Sheet, served on May
 8 29, 2020 (and attached hereto as Exhibit 1), narrowed almost nothing and still seeks broad categories of
 9 remedies over a period of more than two decades. Indeed, the Amended Fact Sheet contradicts some of
 10 plaintiffs' prior statements. Plaintiffs represented on March 25 that "[g]enerally speaking" they sought
 11 "(a) the forward-looking costs of abatement of the public nuisance in San Francisco caused by opioids;
 12 (b) civil penalties and injunctive relief tethered to Defendants' violations occurring within San Francisco
 13 of the [UCL] and [FAL]; and (c) limited remedies under RICO." Dkt. 135 at 9-10. Plaintiffs' Amended
 14 Fact Sheet, in contrast, seeks that relief plus more. Specifically, the City now seeks:

- 15 1. With respect to the RICO claims: "*all legal and equitable relief permitted by law*," including
 "actual damages; treble damages; equitable and/or injunctive relief in the form of Court-
 supervised corrective communications, actions, and programs; forfeiture as deemed proper
 by the Court" and fees, costs, and interest. Ex. 1 at 2 (emphasis added).
- 16 2. With respect to the public nuisance claim: "the costs of future abatement of the opioid-related
 public nuisance in San Francisco *and all other legal and equitable relief allowed by law*." *Id.*
 at 3 (emphasis added).
- 17 3. With respect to the UCL and FAL claims: "*injunctive relief, restitution, and civil penalties*."
 Id. (emphasis added).

24 It is therefore apparent that plaintiffs have not "narrowed" the scope of their requested relief at all.

25 Additionally, while plaintiffs' Amended Fact Sheet reduced the number of separate line items for
 26 which they seek damages, the actual *scope* of the damages sought appears to be largely unchanged. For
 27 example, under the category of "Public Health and First Responder" costs, plaintiffs previously stated
 28 that they sought damages for costs related to "Counseling for grief, post-traumatic stress disorder and

1 depression,” “Mental health facilities,” “Opioid education programs,” “Opioid prevention programs,”
 2 “Opioid abuse programs,” “Social services,” “Increased Veterans Services expenditures,” “Patient
 3 transportation,” and “Rehabilitation and treatment programs.” *See* Dkt. 66-2 (initial Plaintiff Fact Sheet)
 4 at 3-4. In their Amended Fact Sheet, plaintiffs collapse all such costs into the broader subcategories of
 5 “Mental and behavioral health facilities and programs,” and “Drug education, prevention and treatment
 6 programs.” Ex. 1 at 3. Similarly, costs related to “Narcan/Naloxone administration,” “Public and
 7 employee training on the administration of Narcan/Naloxone,” “Purchases of Narcan/Naloxone,” and
 8 “Public and employee training on administering Narcan/Naloxone” no longer appear as separate
 9 subcategories (*see* Dkt. 66-2 at 3); instead, such costs have been collapsed into the broader subcategory
 10 of “Narcan/Naloxone purchase and training.” *See* Ex. 1 at 3. In substance, Plaintiffs have not narrowed
 11 the relief they seek. Plaintiffs’ damages claims remain breathtakingly broad and will require broad
 12 discovery.

13 II. What Really Has to Be Done?

14 Plaintiffs previously argued that discovery in this case could be “circumscribed” (Dkt. 135 at 9)
 15 but then described only the limited categories of discovery plaintiffs desire from defendants. Such
 16 discovery from Defendants should indeed be circumscribed given that plaintiffs already have access to
 17 comprehensive national discovery from defendants. *Id.* at 10. But that has nothing to do with the
 18 discovery defendants need *from plaintiffs* in order to defend themselves in this litigation, including on
 19 issues related to the existence of any nuisance in the first instance, causation, and damages. Defendants’
 20 Response exhaustively categorized the areas in which they require discovery. *See* Dkt. 133 at 7-13.
 21 Based on the FAC and plaintiffs’ Amended Fact Sheet, nearly all of that discovery is still needed, as
 22 summarized below:

23 1. Law Enforcement

24 Plaintiffs’ entire case is premised on theories involving criminal activity, by doctors and other
 25 healthcare providers who write medically unnecessary prescriptions, *see, e.g.*, FAC ¶¶ 12, 59;
 26 individuals who divert prescription opioid medications, *see, e.g., id.* ¶¶ 7, 51, 59, 166, 546; traffickers
 27 and drug dealers of diverted prescription opioid medications or heroin, fentanyl, and other illicit opioids,
 28 *see, e.g., id.* ¶¶ 5, 14, 67; and individuals who abuse prescription opioid medications or illicit opioids,

1 *see, e.g., id.* ¶¶ 64, 67. As defendants have previously explained, discovery from local and third-party
 2 law enforcement entities is therefore necessary in order to understand both the full scope of plaintiffs'
 3 alleged harm and necessary elements of plaintiffs' case, including causation. That is true for all of
 4 plaintiffs' causes of action, as well as for the remedies sought.¹

5 **2. District Attorney and Courts**

6 Although plaintiffs' Amended Fact Sheet deleted some categories of damages related to the
 7 district attorney and courts, discovery from the San Francisco District Attorney's office is still needed to
 8 identify non-party criminal actors and their conduct, as that conduct relates to causation and fault.
 9 San Francisco's drug courts will have important information concerning the scope of opioid and other
 10 drug use within San Francisco and plaintiffs' efforts to address and rehabilitate users of opioids and
 11 other drugs.

12 Additionally, plaintiffs still allege a claim for public nuisance, for which they "seek costs that
 13 will be associated with future efforts to abate the public nuisance in San Francisco." FAC ¶ 905. The
 14 criminal justice system – including the costs of treatment, rehabilitation, and prevention of recidivism –
 15 has been a significant element of other jurisdictions' abatement plans. For example, the two Ohio
 16 plaintiffs in Track One of the MDL proposed abatement plans including over \$300 million in funding
 17 for programs relating to the criminal justice system.

18 **3. Emergency Services**

19 Plaintiffs' Amended Fact Sheet still claims damages for various types of expenditures related to
 20 "Public Health and First Responders," including "Emergency medical services" and "Narcan/Naloxone
 21 purchase and training." Ex. 1 at 3. The San Francisco Fire Department Division of Emergency Medical
 22 Services is also likely to possess critical information more generally about opioid abuse and treatment.

23
 24
 25
 26 ¹ Plaintiffs continue to seek extensive damages relating to law enforcement activities. Although
 27 plaintiffs' Amended Fact Sheet deleted some separately listed sub-categories of law enforcement-related
 28 costs, most such subcategories appear to have been either moved ("Narcan/Naloxone purchase and
 training") or collapsed into broad categories (e.g., "Task forces/special projects"). Ex. 1.

1 **4. Public Health**

2 Plaintiffs claim damages for ten categories of public health-related expenditures, including
 3 “Emergency medical services,” “Mental and behavioral health facilities and programs,” “Needle
 4 exchange and prescription drug take-back programs,” “Drug education, prevention and treatment
 5 programs,” “HIV/Hepatitis C programs,” “Public health clinics,” “Public hospitals,” “Narcan/Naloxone
 6 purchase and training,” “Training on safe prescription practices,” and “Training on safe prescription
 7 drug disposal.” Ex. 1 at 3. Defendants require discovery concerning each of these categories. For
 8 example, the San Francisco Department of Public Health compiles data by tracking the impact of
 9 substance use and abuse, which is an important source of information on the overdose and death trends
 10 in the City and County of San Francisco, as well as the prevention and training programs that Plaintiffs
 11 implemented to mitigate the alleged harm.²

12 Plaintiffs also claim damages related to “Public health clinics” and “Public Hospitals.” Ex. 1 at
 13 3. The San Francisco Health Network is a public healthcare system that includes 14 primary health care
 14 centers, hospital care through the Zuckerberg San Francisco General Hospital and Treatment Center and
 15 Laguna Honda Hospital, urgent care, and behavioral health services. This network of public health
 16 facilities likely possesses relevant information concerning the scope and impact of opioid and other drug
 17 use within San Francisco. Further, defendants are likely to require third-party discovery from a number
 18 of other public health agencies and related entities, including: (1) California Conference of Local Health
 19 Officers; (2) California Department of Aging; (3) California Department of Public Health; (4) California
 20 Emergency Medical Services Authority; (5) California Health & Human Services Agency; (6) California
 21 Department of State Hospitals; (7) California Mental Health Services Overnight & Accountability; (8)
 22 California Office of the Patient Advocate; (9) California Department of Managed Health Care; (10)

23
 24 ² Topics to be addressed in this discovery may include, *inter alia*, epidemiological data regarding
 25 addiction and mental health treatment and opioid use, abuse, and overdose, and mortality; uniformly
 26 deidentified treatment, encounters, and dispensing records related to opioid prescriptions written and
 27 addiction or overdose treatment provided; records related to treatment with naloxone and other
 28 medically assisted treatment reports; records of grants received from state and federal sources related to
 opioids; provider lists and budgets for substance use treatment providers; records related to admissions
 to substance use disorder treatment; data related to substance abuse trends and drug availability; and
 CURES data reports used by the City and County.

1 California Department of Health Care Services; (11) California Office of Health Information and
 2 Integrity; and (12) California Office of Statewide Health Planning and Development.

3 **5. Medical Examiners**

4 One of the primary focuses of plaintiffs' FAC, and an essential component of any causal chain
 5 between alleged defendant misconduct and any harm to plaintiffs, are overdose deaths purportedly
 6 related to opioids. *See, e.g.*, FAC at ¶¶ 3-4, 6, 13-14. These allegations require extensive discovery
 7 from the Office of the Chief Medical Examiner, which investigates individual deaths and tracks
 8 community health trends. Defendants will require discovery from that office to test, for example,
 9 whether any overdoses involved their opioids, the true cause of overdoses, trends involving overdoses
 10 over time, how causes of death are determined and recorded in the overdose context, and other related
 11 subjects. In addition, plaintiffs claim damages for various coroner and medical examiner-related
 12 expenditures, including "Morgue space," "Storage of bodies," "Burials and cremations," "Toxicology
 13 testing," "Biohazard waste disposal," and "Autopsies in suspected overdose deaths." Ex. 1 at 3.

14 **6. Child and Family Services**

15 Defendants will require discovery from plaintiffs' departments and divisions related to Child and
 16 Family Services. Although plaintiffs removed a separate damages category for this from their Amended
 17 Fact Sheet, they still seek damages for "social services to victims of the opioid epidemic and their
 18 families," "mental-health services," and "counseling." FAC ¶¶ 851, 882. In Track One of the MDL,
 19 Child and Family Services was one of the largest categories of alleged damages. Additionally, plaintiffs
 20 seek the costs of "future abatement," which will necessarily require discovery of past programs and
 21 expenditures even if they do not ultimately seek to recover specific past damages related to Child and
 22 Family Services.

23 Such discovery is likely to address, *inter alia*, policies and practices over time related to
 24 investigations and cases involving opioids, data maintained in plaintiffs' Child Welfare Services / Case
 25 Management System showing the number of cases involving opioids compared to alcohol and other
 26 drugs; drug testing data and contracts; department budgets; and grants received from state and federal
 27 sources.

1 **7. Health Plans and Officials Responsible for Administering Them**

2 Plaintiffs have identified nine “medical insurance plan[s] or carrier[s], behavioral health carriers,
 3 or workers compensation programs” used by its employees since January 1, 2008 and nine pharmacy
 4 benefit managers or third-party claims administrators they have used since January 1, 2006. Ex. 1 at 17-
 5 19. Defendants will seek documents and testimony from plaintiffs regarding their oversight over those
 6 plans/carriers and mangers/administrators, including whether and to what extent plaintiffs continue to
 7 reimburse for the types of opioid prescriptions that plaintiffs allege were wrongful.

8 Defendants will also require discovery related to third-party health plans offered to residents of
 9 San Francisco, including large insurers, pharmacy benefit managers, and private managed care
 10 organizations operating in San Francisco. These entities have, *inter alia*, critical claims data
 11 demonstrating the number and types of opioids prescribed to San Francisco residents over time, the
 12 healthcare providers who prescribed these opioids, and the conditions for which they were prescribed.

13 Also, plaintiffs seek damages for purported “bulk purchases of prescription opioids by its
 14 hospitals and pharmacies resulting from” alleged RICO violations. Ex. 1 at 2. Defendants require
 15 discovery into those purchases, as well as into the hospitals and pharmacies that made the purchases, to
 16 determine why those purchases were made, the resulting prescriptions written for the medications
 17 included in those purchases, and why plaintiffs claim those prescriptions were wrongful, among other
 18 subjects.

19 **8. Budget and Finance**

20 In their Amended Fact Sheet, Plaintiffs seek wide-ranging damages to offset alleged increases to
 21 their budget, including “costs of future abatement of the opioid-related public nuisance” and 21 separate
 22 categories of damages that they contend relate to “increases in costs” to the City and County of
 23 San Francisco. Plaintiffs claim that the financial costs from the opioid epidemic “that are already known
 24 are staggering,” and identify certain line items in a 2017 budget proposal that were “specifically targeted
 25 at addressing ‘[t]he surge of opiate abuse and addiction.’” FAC ¶ 58. Defendants require discovery
 26 from the Mayor’s Office of Public Policy and Finance, the Controller’s Office, and the Board of
 27 Supervisors to identify any proposed and actual opioid-related expenditures in San Francisco’s budget
 28 throughout the relevant time period, including “costs of future abatement.”

1 **9. Opioid Task Forces**

2 Plaintiffs seek damages for costs related to “Task Force/special projects.” Ex. 1 at 3.

3 Defendants require discovery into the various task forces and “special projects” – none of which are
 4 actually identified in the Amended Fact Sheet. Through Defendants’ independent investigation, various
 5 San Francisco Departments and Boards operate drug-related tasks forces working to identify harm
 6 reduction strategies to decrease and manage illicit drug (*e.g.*, methamphetamine) use, develop
 7 recommendations on the operation of safe injection services, and advise City government officials on
 8 policies to help address drug dealing that is particularly rampant in certain neighborhoods within
 9 San Francisco. These include the San Francisco Methamphetamine Task Force (facilitated by
 10 San Francisco Department of Public Health), San Francisco Safe Injection Services Task Force
 11 (facilitated by San Francisco Department of Public Health), and the Street-Level Drug Dealing Task
 12 Force. Such task forces possess information that is highly important to plaintiffs’ claims for damages
 13 related to, *inter alia*, “Needle exchange and prescription drug take-back programs,” “Narcan/Naloxone
 14 purchase and training,” and “Task Force/special projects.” Ex. 1 at 3.

15 **10. Other Third Party Discovery**

16 As explained in defendants’ Response, numerous third parties have discoverable information
 17 relevant to plaintiffs’ claims and defendants’ defenses. Dkt. 133 at 12-13. Defendants will require
 18 discovery from professional regulatory authorities (*e.g.*, the California Medical Board), California’s
 19 prescription drug monitoring program (“CURES”), insurers and workers’ compensation providers,
 20 professional organizations (*e.g.* the California Medical Association), and healthcare providers. Plaintiffs
 21 represented that they have “serious concerns” regarding defendants’ plan to propound third-party
 22 discovery requests. Dkt. 135 at 11. These abstract “concerns” are simply an attempt to curtail from the
 23 outset defendants’ ability to test plaintiffs’ theories of harm. Plaintiffs are not entitled to unilaterally
 24 dictate the discovery to which defendants are entitled. Further, the planned third-party discovery will
 25 pose little, if any, burden on plaintiffs.

26 **B. Limitations on Discovery**

27 Plaintiffs previously admitted that an “aggressive” case schedule is “manageable” only if the
 28 Court severely curtails defendants’ right to discovery. *See* Dkt. 129 at 1. Plaintiffs have not yet asked to

1 meet and confer with defendants on potential limitations on discovery, and as of this filing plaintiffs'
 2 responses to defendants' initial document requests have not yet been served. Defendants remain
 3 prepared to meet and confer in good faith about the necessary scope of discovery, but as they have
 4 previously explained (*see* Dkt. 133 at 13-14), plaintiffs' proposed limitations on document custodians
 5 and discovery from plaintiffs are unworkable in light of their sweeping claims.

6 III. Proposed Case Schedule

7 As explained above, plaintiffs have failed to narrow their claims in any meaningful regard. And,
 8 as all involved are keenly aware, the COVID-19 Pandemic has already significantly impacted the
 9 parties' ability to litigate this case, and even the most optimistic of assumptions cannot ignore the fact
 10 that this impact is likely to continue. In light of these developments, defendants' previous scheduling
 11 proposal, which would have culminated in an October 2021 trial, is no longer feasible. Defendants
 12 therefore propose a trial beginning February 21, 2022, with interim case deadlines as set forth in the
 13 table below.³

| 14 | Deadline | Defendants' Proposal |
|----|---|----------------------|
| 15 | Substantial completion of document production | March 1, 2021 |
| 16 | Close of fact discovery | July 2, 2021 |
| 17 | Plaintiffs' expert reports and deadline for plaintiffs to offer two deposition dates for each expert between July 19 and August 16 | July 12, 2021 |
| 18 | Defendants' expert reports and deadline for defendants to offer two deposition dates for each expert between August 30 and September 13 | August 23, 2021 |
| 19 | Close of expert discovery | September 13, 2021 |
| 20 | Motions for summary judgment and <i>Daubert</i> motions | October 1, 2021 |
| 21 | | |
| 22 | | |
| 23 | | |
| 24 | | |

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26 ³ In addition, defendants will meet and confer with plaintiffs regarding interim dates during fact
 27 discovery for the identification of prescriptions plaintiffs claim caused them harm for which they seek
 28 relief, as the parties have done in the MDL, and as the MDL court has incorporated into case schedules
 in multiple bellwether cases, *e.g.* Case No. 17-md-2804 (N.D. Ohio), Dkt. 3325 at 3.

| Deadline | Defendants' Proposal |
|---|----------------------|
| Oppositions to motions for summary judgment and <i>Daubert</i> motions | November 12, 2021 |
| Replies in support of motions for summary judgment and <i>Daubert</i> motions | December 3, 2021 |
| Hearings on motions for summary judgment and <i>Daubert</i> motions | December 17, 2021 |
| Parties to lodge and serve witness and exhibit lists ⁴ | January 4, 2022 |
| Parties to file juror questionnaire, proposed voir dire questions, and simplified statement of the case | January 11, 2022 |
| Joint proposed pre-trial order | January 18, 2022 |
| Motions <i>in limine</i> | January 18, 2022 |
| Oppositions to motions <i>in limine</i> | January 25, 2022 |
| Replies in support of motions <i>in limine</i> | February 1, 2022 |
| Proposed jury instructions and special verdict form | February 1, 2022 |
| Final Pretrial Conference | February 8, 2022 |
| Trial | February 21, 2022 |

* * *

For the foregoing reasons, defendants respectfully request that the Court enter defendants' proposed schedule, which accounts for the unique scope and scale of this case and provides defendants the time necessary to develop the record and prepare for trial.

DATED: June 8, 2020

Respectfully submitted,

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⁴ These and the following dates are based on the Court's standing jury trial order. Based on experience in other cases, the parties will likely wish to discuss building in more time for some of these items.

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ATTESTATION

I, Sonya Winner, hereby attest, pursuant to N.D. Cal. Civil L.R. 5-1, that the concurrence to the filing of this document has been obtained from each signatory hereto.

DATED: June 8, 2020

By: /s/ Sonya D. Winner
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